

1 pled guilty to the offense pursuant to a plea agreement with the
2 government. ##22, 23.

3 Under the terms of the agreement, defendant waived his
4 constitutionally-guaranteed trial rights (#23 at 2, § B); agreed to
5 not withdraw his guilty plea (*id.* at 2, § C); affirmed his prior
6 convictions and agreed that he failed to register as a sex offender
7 in Nevada on or about April 18, 2013 (*id.* at 3-4, §§ D(1)-(5));
8 acknowledged that this "Court has discretion to impose any
9 reasonable sentence up to the maximum term of imprisonment
10 permitted by statute" (*id.* at 5, § A); agreed that the government
11 would "recommend the low-end of the Sentencing Guidelines," but
12 expressly "acknowledge[d] that the Court does not have to follow
13 those recommendations" (*id.* at 8, § VIII); and waived his rights to
14 appeal or collaterally attack his conviction or sentence, reserving
15 only the right to appeal "any portion of the sentence that is an
16 upward departure from the Sentencing Guidelines range determined by
17 the Court," and the right to raise in a collateral challenge only
18 "non-waivable claims of ineffective assistance." *Id.* at 10-11, § B.
19 Defendant acknowledged that the agreement had "resulted from an
20 arms-length negotiation" in which both parties made "valuable
21 concessions," and agreed that there were to be "no additional
22 promises, agreements or conditions . . . unless set forth in
23 writing and signed by all parties or confirmed on the record . . .
24 ." *Id.* at 11, 13. Based on defendant's admissions and acquiescence
25 to the terms of the agreement, the court accepted his guilty plea
26 on August 28, 2014, and ordered the PSR. (#22).

1 **The Motion**

2 Defendant raises four claims to support his petition for
3 habeas relief: 1) his instant arrest was illegal because the
4 officers who arrested him did not have a warrant; 2) he was not
5 actually required to register as a sex offender under California
6 law; 3) the court refused to accept the plea agreement of the
7 parties; and 4) his credit for time served has been inappropriately
8 calculated.

9 **Analysis**

10 Defendant raises claims that were foreclosed by the plain
11 language of the plea agreement as well as the court's canvass of
12 defendant during his change of plea hearing.

13 The first two claims of defendant's motion are legal arguments
14 of the kind properly raised on direct appeal, rather than in a
15 collateral challenge, such as a § 2255 motion.¹ See *Massaro v.*
16 *United States*, 538 U.S. 500 (2003) ("[C]laims not raised on direct
17 appeal may not be raised on collateral review unless the petitioner
18 shows cause and prejudice.")

19 Under the terms of the plea agreement, defendant knowingly and
20 expressly waived his right to appeal, as well as any claims under
21 28 U.S.C. § 2255, except non-waivable claims of ineffective
22 assistance of counsel. See #23 at 10:20-11:2. The court
23 specifically asked defendant whether he understood he was waiving
24 his right to appeal or to raise collateral challenges during the
25

26 ¹ It bears noting that defendant admitted he was required to register as
27 a sex offender because of his conviction of a sexual crime in
28 California. See #51 at 22:4-15. This admission contradicts his second
claim in the instant motion where he asserts he was not actually
required to register under California law.

1 change of plea hearing. See #51 at 15:25-16:10.

2 Defendant was aware of the importance of his waiver as shown
3 through his signature on the plea agreement and his responses to
4 the court's canvass at his change of plea hearing. Thus, the court
5 concludes defendant is not entitled to relief based on the first
6 two claims in his motion.

7 In his third claim, defendant asserts the court imposed a
8 sentence greater than that agreed upon by the parties. While the
9 parties agreed to recommend that the court sentence the defendant
10 to a period of incarceration at the low-end of the sentencing
11 guidelines, the defendant was repeatedly and expressly notified
12 that the court was not bound by the agreement of the parties,
13 except that defendant would have the right to appeal if the court
14 were to depart above the guideline range. See #23 at 8:6-7; #51 at
15 18:3-19:19 and 21:16-20. The sentencing guideline range in this
16 case was 18-24 months. See #52 at 8:17. The court sentenced
17 defendant to 21 months. #42. The sentence imposed by the court was
18 therefore within the calculated guideline range. Moreover,
19 defendant's sentence is within the range anticipated by the parties
20 and defendant expressly waived his right to appeal such a sentence
21 in the plea agreement and at his change of plea hearing. See #23 at
22 8:6-7; #51 at 21:16-20.

23 Defendant's fourth claim concerns his credit for time served.
24 This claim is redundant of defendant's motion #47, which was
25 separately adjudicated in the court's order #58.


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1 **Conclusion**

2 Accordingly, and based on the foregoing, defendant's motion to
3 vacate under 28 U.S.C. § 2255 (#43) is **DENIED**.

4 IT IS SO ORDERED.

5 DATED: This 9th day of June, 2015.

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7
8 UNITED STATES DISTRICT JUDGE